

# **MINUTES OF THE OPEN SESSION**

## **OF THE RHODE ISLAND ETHICS COMMISSION**

**April 28, 2015**

**The Rhode Island Ethics Commission held its 6th meeting of 2015 at 9:00 a.m. at the Rhode Island Ethics Commission conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Tuesday, April 28, 2015, pursuant to the notice published at the Commission offices, the State House Library, and electronically with the Rhode Island Secretary of State.**

**The following Commissioners were present:**

**Ross Cheit, Chair    Mark B. Heffner\*\***

**John D. Lynch, Jr., Vice Chair    Timothy Murphy**

**Robert A. Salk, Secretary    James V. Murray**

**Frederick K. Butler\*    Marisa A. Quinn**

**Also present were Edmund L. Alves, Jr., Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Katherine D'Arezzo, Senior Staff Attorney; Jason Gramitt, Education Coordinator/Staff Attorney; Staff Attorneys Teresa Giusti and Amy C. Stewart; and Commission Investigators Steven Cross, Peter J. Mancini and Gary V. Petrarca.**

**At 9:00 a.m., the Chair opened the meeting. The first order of business was:**

**Approval of minutes of the Open Session held on April 14, 2015.**

**Upon motion made by Commissioner Lynch and duly seconded by Commissioner Quinn, it was**

**VOTED: To approve minutes of the Open Session held on April 14, 2015.**

**AYES: John D. Lynch, Jr.; Timothy Murphy; Marisa A. Quinn; Robert A. Salk; Ross Cheit.**

**ABSTENTIONS: James V. Murray**

**\*Commissioner Butler arrived at 9:01 a.m.**

**The next order of business was:**

### **Advisory Opinions**

**The advisory opinions were based on draft advisory opinions prepared by Commission Staff for review by the Commission and were scheduled as items on the Open Session Agenda for this date.**

**The first advisory opinion was that of:**

**Lisa A. DiBello, a former member of the Charlestown Town Council, requesting an advisory opinion regarding whether she may, within one year of leaving the Town Council, apply to the Town of Charlestown to be employed as its Director of Parks & Recreation.**

**Staff Attorney Gramitt presented the Commission Staff recommendation. The Petitioner was present. Staff Attorney Gramitt summarized the draft advisory opinion and explained that there are two options presented for the Commission's consideration. He stated that Option #1 would grant an exception, pursuant to Commission Regulation 36-14-5014(c) ("Regulation 5014"), and permit the Petitioner to apply for the position of Parks & Recreation Director within one year of leaving the Charlestown Town Council ("Town Council"). He stated that Option #2 would find that the Petitioner is prohibited by Regulation 5014 from applying for the position of Parks & Recreation Director within one year of leaving the Town Council. He informed that the two Options allow the Commission to consider whether or not there would be an appearance of impropriety if an exception to the one-year revolving door restriction was granted.**

**\*\* Commissioner Heffner arrived at 9:07 a.m.**

**The Petitioner stated that, in 2010, she was terminated wrongfully**

from her position as Director of Parks & Recreation. She stated that because of that termination she ran for and was elected to the Town Council in 2010 and 2012. She informed that she did not seek reelection in 2014.

Commissioner Murphy stated that it does not seem that the Petitioner is using her former position to get an unfair advantage in this case, and he was inclined to grant an exception. Chair Cheit stated that there are two significant factors here: her long-standing service as Director of Parks & Recreation; and the settlement of her wrongful termination lawsuit by the Town, which implies that the case had merit. In response to Chair Cheit, the Petitioner stated that reinstatement was not an option at the time of settlement because a new person was in that position. She informed that the most recent Director of Parks & Recreation has since resigned, and she would like to apply for the opening.

In response to Chair Cheit, Staff Attorney Gramitt stated that if the Petitioner is granted an exception today she may apply for the position. He explained, however, that if she is offered the job within one year of leaving the Town Council, she will have to seek an advisory opinion to get an exception to Commission Regulation 36-14-5006. He informed that Commission Regulation 36-14-5006 prohibits the Petitioner from accepting an appointment that requires the approval of the Town Council until the expiration of one year after the end of her service with that body, unless the Ethics Commission

**grants an exception based upon a finding of substantial hardship for the municipality, not the Petitioner. Commissioner Murphy moved to approve Option #1. His motion was duly seconded by Commissioner Murray, whereupon there was more discussion.**

**The Petitioner informed that the Town Council approved her settlement in 2014. She stated that, since that time, there are three new members of the Town Council. Chair Cheit stated that this was a very unusual situation, given her past service as Director, her apparent wrongful termination, and subsequent service on the Town Council. He stated that the exception exists for unique situations like this one. Upon the motion previously made by Commissioner Murphy and duly seconded by Commissioner Murray, it was unanimously**

**VOTED: To issue Option #1 as an advisory opinion, attached hereto, to Lisa A. DiBello, a former member of the Charlestown Town Council.**

**The second advisory opinion was that of:**

**Erin Dube, a member of the Pawtucket School Committee, requesting an advisory opinion regarding how the Code of Ethics restricts her participation in certain School Committee matters, given that her sister-in-law is a teacher at one of the public schools in Pawtucket and is also a member of the Pawtucket Teachers' Union.**

**Staff Attorney Stewart presented the Commission Staff recommendation. The Petitioner was not present. Upon motion made by Commissioner Butler and duly seconded by Commissioner Quinn, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to Erin Dube, a member of the Pawtucket School Committee.**

**The third advisory opinion was that of:**

**Robert Kempenaar, II, a member of the Middletown Town Council, requesting an advisory opinion regarding whether he qualifies for a hardship exception to the Code of Ethics' prohibition on representing himself before municipal boards over which the Middletown Town Council has appointing authority, the Middletown Zoning Board and the Middletown Planning Board, in order to bring a motel that he owns and operates into compliance with brand specifications.**

**Staff Attorney Stewart presented the Commission Staff recommendation. She informed that the Petitioner was not present because he was out-of-state on a previously scheduled vacation. In response to Commissioner Butler, Staff Attorney Stewart stated that the upgrades were not required by Howard Johnson but strongly encouraged. She explained that, while hardship is not defined in the Code of Ethics, it is considered based upon the totality of the**

**circumstances and specific factors in cases involving property.**

**Discussion ensued. Commissioner Murphy suggested continuing the advisory opinion in order to enable the Petitioner to answer any outstanding questions. In response to Chair Cheit, Staff Attorney Stewart stated that the Petitioner was not given safe harbor. Chair Cheit noted that it was the consensus of the Commission that the Petitioner's advisory opinion would be continued to May 19, 2015.**

**The final advisory opinion was that of:**

**Michele H. Kazarian, Esq., the Probate Judge for the City of East Providence, a municipal appointed position, who also works part-time as an attorney for the Rhode Island General Assembly, a state employee position, requesting an advisory opinion regarding whether the Code of Ethics prohibits: (1) her participation in matters before the East Providence Probate Court in which a current or former employee or member of the General Assembly is the attorney of record; and (2) her political activity for various state and local candidates.**

**Staff Attorney Stewart advised that the Petitioner was unable to attend today's meeting and has requested to have her advisory opinion continued to May 19, 2015.**

**The next order of business was:**

## **Executive Session.**

**Commissioner Murphy asked whether the Commission should hold the probable cause hearing in In re: Dawson T. Hodgson, Complaint No. 2014-14, in open session because it is a matter of public interest. Legal Counsel Alves stated that Commission Regulations require probable cause hearings to be held in executive session. However, he noted that Chair Cheit will report out the Commission's decision on that matter upon returning to open session.**

**At 9:48 a.m., upon motion made by Commissioner Lynch and duly seconded by Commissioner Heffner, it was unanimously**

**VOTED: To go into Executive Session, to wit:**

**1.Motion to approve minutes of the Executive Session held on April 14, 2015.**

**2.In re: Dawson T. Hodgson, Complaint No. 2014-14, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4).**

**3.In re: Joseph J. Nicholson, Complaint No. 2015-1, pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4).**

**4.In re: Joseph J. Nicholson, Complaint No. 2015-2, pursuant to R.I.**



**Gen. Laws § 42-46-5(a)(2) and (4).**

**The Commission reconvened in Open Session at approximately 11:16 a.m. Upon motion made by Commissioner Murphy and duly seconded by Commissioner Murray, it was unanimously**

**VOTED: To seal the minutes of the Executive Session held on April 28, 2015.**

**The next order of business was:**

**Report on Actions Taken in Executive Session.**

**Chair Cheit reported that the Commission took the following actions in the Executive Session:**

**1.Voted to approve the minutes of the Executive Session held on April 14, 2015.**

**[The vote was as follows:**

**AYES: John D. Lynch, Jr.; Marisa A. Quinn; Robert A. Salk; Timothy Murphy; Ross Cheit.**

**ABSTENTIONS: Frederick K. Butler; James V. Murray.**

**Commissioner Heffner was not in the room when this vote was taken.]**

**2.In the matter of In re: Dawson T. Hodgson, Complaint No. 2014-14, voted (7-1) to find that probable cause does not exist to believe that the Respondent, a former State Senator and candidate for Attorney General of Rhode Island, violated R.I. Gen. Laws § 36-14-16 either by his failure to disclose his one-third ownership interest in real property located in Slocum, Rhode Island on his 2012 Financial Disclosure Statement (“Statement”) or by his failure to disclose executive positions that he held in Sodco, Inc., on his 2011 and 2012 Statements. The complaint was dismissed with prejudice.**

**[The vote was as follows:**

**AYES: Frederick K. Butler; Mark B. Heffner; John D. Lynch, Jr.; Timothy Murphy; James V. Murray; Robert A. Salk; Ross Cheit.]**

**NOES: Marisa A. Quinn.]**

**\*\*Commissioner Heffner left the meeting at 11:10 a.m.**

**\* Commissioner Butler left the meeting at 11:15 a.m.**

**[Neither Commissioner Heffner nor Commissioner Butler participated in the votes on the following two Nicholson Complaints.]**

**3.Unanimously voted to initially determine that the facts alleged in In re: Joseph J. Nicholson, Complaint No. 2015-1, if true, are sufficient to constitute a knowing and willful violation of the Code of Ethics and authorized an investigation.**

**4.Unanimously voted to initially determine that the facts alleged in In re: Joseph J. Nicholson, Complaint No. 2015-2, if true, are sufficient to constitute a knowing and willful violation of the Code of Ethics and authorized an investigation.**

**The next order of business was:**

### **Legislative Update**

**Staff Attorney Gramitt summarized the status of the bills listed on the agenda for this meeting. He informed that, two weeks ago, the Senate Judiciary Committee considered S 0056 (Sponsored by Senator O'Neill) and S 0173 (Sponsored by Senator Sheehan), two bills related to restoring the Ethics Commission's jurisdiction over the General Assembly. He stated that S 0056 would restore the Ethics Commission's jurisdiction over the General Assembly with no restrictions. He stated that S 0173 would restore the Ethics Commission's jurisdiction with some compromises: 1) appellate review of Ethics Commission decisions would be by a trial de novo; 2) providing an exception for legislative speech; and 3) increasing the**

**Commission's membership to eleven by adding an additional Senate appointment and Governor appointment.**

**Staff Attorney Gramitt stated that he signed in at the hearing in favor of S 0056 and took no position on S 0173. He stated that Commissioner Murphy also attended the hearing. He stated that testimony was received from himself; John Marion of Common Cause Rhode Island; Margaret Kane from Operation Clean Government; Phil West; and some business owners. He informed that there was unanimous support among those testifying for S 0056 and not for S 0173. He stated that the Senate Judiciary Committee overwhelmingly supported S 0173. He stated that after a few hours of testimony both bills were held for further study. He stated that he will continue to monitor these bills.**

**The next order of business was:**

**Director's Report.**

**Executive Director Willever reported that there were ten (10) complaints and three (3) advisory opinions pending. He stated that nine (9) APRA requests were granted since the last meeting, eight (8) of which were completed within one (1) business day. He stated that one APRA request, which was granted in part and denied in part, was completed within seven (7) business days.**

**The final order of business was:**

## **New Business**

**Commissioner Murphy stated that, after reflecting on the Advisory Opinion issued to Daniel McKiernan at the last meeting, he would like the Commission to look into whether General Assembly members should be prohibited from entering into certain employment or business associations with people, such as lobbyists. He asked the Staff to come up with factual scenarios that the Code of Ethics should prohibit. Chair Cheit directed Staff to look at other jurisdictions and report their findings back to the Commission.**

**At 11:30 a.m., upon motion made by Commissioner Murphy and duly seconded by Commissioner Lynch, it was unanimously**

**VOTED: To adjourn.**

**Respectfully**

**submitted,**

**Robert A. Salk**  
**Secretary**

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